

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

FIRST APPEAL NO.845 OF 1987

Dena Bank a body corporate carrying)
on business at Devkaran Nanjee Building)
17, Horniman Circle, Bombay 400 001.).. Appellant
(Org.Defendant)

Versus

W.N.Kochar, Sole Proprietor of)
Messrs. Consolidated Trading Corporation)
carrying on business at Advani Chambers)
Pherozechah Mehta Road, Bombay 400 001).. Respondent
(Org.Plaintiff)

Mr.A.R.Bamne for the Appellant.

Mr.G.S.Hegde with Mr.C.M.Lokesh for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

JUDGMENT RESERVED ON : 14TH OCTOBER 2004

JUDGMENT PRONOUNCED ON : 25TH NOVEMBER 2004

JUDGMENT :

. This First Appeal challenges the judgment and order dated 21st February 1985 passed by the Judge, City Civil Court, Bombay in Suit No.10855 of 1972. The Suit has been decreed and the Defendant i.e. the Appellant herein is directed to pay the Plaintiff i.e. the Respondent herein a sum of Rs.22,745.74 paise with interest at 9% per annum from the date of filing of the suit till the date of judgment on Rs.17,910.12 and further interest at the rate of 6% per annum on the amount of Rs.17,910.12 from the date of judgment till

payment and costs.

2. The Respondent was carrying on business as a Sole Proprietor of the firm known as M/s.Consolidated Trading Corporation. The Respondent exported goods to the Middle East. The Respondent had a hypothecation account with the Appellant Bank. The Bank had given the facility of discounting of bills of the firm at 9% of their value. The discounted amount was paid to the Plaintiff. The balance amount was paid by the Bank to the Plaintiff on realisation of the amounts from the foreign importers. On 9th December 1965, the Appellant Bank had sanctioned to the Respondent a packing credit facility of the limit of Rupees Two lakhs against hypothecation of goods against export. The Respondent, according to the Appellant, executed Document of Purchase Note (DP Note), Letter of Continuity and Letter of Hypothecation. The Bank also sanctioned on the same day a facility to purchase DP Bill and Letter of Credit of firm contract and Document or Acceptance Bills of maximum 90 days with the Export Credit and Guarantee Corporation (ECGC) Policy for export of mill made cotton goods upto the limit of Rupees Two lakhs with a 10% margin. The Respondent executed a D.P. Letter, Letter of Continuity and Stamped Foreign Export Bill Form on the same day. According to the Respondent, in the month of January 1966, he sold a consignment of goods valued

at Pound/Sterling 2231-4s-6d to an importer in Kuwait. The Bill of Exchange was drawn upon the foreign importer worth Pound/Sterling 2231-4s-6d. The Bank discounted the foreign bill for Rs.26,051.60 which was 90% of the value of the goods at the then exchange rate. This amount was credited to the hypothecation account of the Plaintiff's firm on 11th February 1966. It appears that thereafter on 6th January 1966, the Indian Rupee was devalued and the exchange rate for the value of Pound/Sterling was Rs.21/- instead of Rs.13.33. The Bank received the amount of the bill as the agent of the Respondent. However, it appears that although the Rupee value of the goods sold by the Plaintiff to the foreign importer increased by about 57%, the Bank did not discount the bill at the new exchange rate. On 14th June 1966, the Respondent called upon the Bank to credit the increased amount to the account of the firm. The Bank refused to do so, claiming that it had purchased the draft and it was entitled to the benefit of the new rate of exchange. According to the Bank, since the Bill of Exchange constituted a document of purchase it had become a holder in due course, it was entitled to retain the additional amount which it had collected from the importer on account of devaluation of the Rupee.

3. The facts in the present Appeal are similar to the facts in First Appeal No.813 of 1987. The issues

involved in both the Appeals are the same viz. (i) whether the Bill of Exchange constituted a document of purchase or a document of acceptance and (ii) whether the Bank was entitled to retain the additional amount received from the buyer on account of the devaluation of the Indian Rupee.

4. For the reasons stated in First Appeal No.813 of 1987, the First Appeal is dismissed. No order as to costs.

5. Certified copy expedited.